IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23461 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TARUNKUMAR VIRCHAND SHAH
Versus
DOLERKUMAR VIRCHAND SHAH

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Appearance :
MR TV SHAH for Petitioner:1
MR PJ KANABAR for Respondent:1

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 17/08/2007

ORAL JUDGMENT

1. Learned counsel appearing for the respondent submitted his case and completed his arguments.

Learned counsel for the respondent submitted that even on a last occasion on 10th August, 2007 when the matter was called out, a counsel appearing for the petitioner was absent and with a view to give one more chance, matter was adjourned. The following order was passed on 10th August, 2007.

> " The learned advocate for the petitioner is absent when the matter is called out. The learned advocate for respondent is present and has submitted his arguments. Hence, with a view to give one more chance, S.O. to 16th August, 2007. The Registry is directed to enlist this matter on a separate board for final hearing."

2. The learned counsel for the applicant is absent even today, when the matter is called out.

3. Learned counsel appearing for the respondent submitted that respondent is original plaintiff in the Civil Suit No.512 of 2002. Suit was preferred by the respondent for specific performance. Certain documents were referred to and relied upon by the original plaintiff. The documents were presented before the Trial Court. The documents were given tentative exhibit numbers. After those tentative exhibit numbers were given, an application below

Exh.162 was given by the present petitioner (original defendant) for de-exhibiting the documents. This application was dismissed by the Trial Court vide order dated 5th August, 2006 against which the present petition has been preferred.

4. It is stated by the learned counsel appearing for the respondent (original plaintiff) that once the documents are exhibited, it cannot be de-exhibited. There is no provision under any law nor such procedure can be adopted by any Court. Looking to the order passed by the Trial Court, it is absolutely in consonance with principles laid down by the Apex Court in the case of **Bipin Shantilal Panchal Vs. State of Gujarat And Anr.** reported in **(2001) 3 SCC 1,** and as per the judgment especially in para 11 to 14 of the Hon'ble Supreme Court has given a direction that Trial Court ought to give exhibit numbers to the documents which will be tentative in nature and the objections raised by the defendants or by the other party shall be recorded by the Trial Court and the said objections will be considered at the time of final hearing of the suit, but if the documents are not given exhibit numbers,

it has been categorically stated by the Hon'ble Supreme Court in the aforesaid judgment that it will be difficult for the Apex Court subsequently to appreciate those documents. The matter will have to remanded to the Trial Court for de novo proceedings, and to avoid multifariousness of the proceedings, tentative exhibit numbers ought to be given.

5. Having heard the learned counsel for respondent and looking to the facts and circumstances of the case, I see no error whatsoever committed by the Trial Court in passing the impugned order below Exh.162 in Civil Suit No.512 of 2002 dated 5th August, 2006. There is no provision under the Evidence Act for de-exhibitnig documents, on the contrary as stated hereinabove, as per the decision of Hon'ble Supreme Court tentative exhibit numbers has to be given. This *ratio decidendi*, has been followed, scrupulously, by the Trial Court. It has been observed by the Trial Court in last para of the impugned order that tentative exhibit numbers have been given. In fact, no objection was ever raised by the original defendants at the time of giving exhibit numbers to the documents. Apart from this aspect of the matter, as stated hereinabove,

tentative exhibit numbers ought to be given by the Trial Court whenever there is any objection by the other party to the suit.

6. Learned counsel for the respondent has also relied upon newly amended provisions of the Code of Civil Procedure especially Order 18 Rule 4 and proviso thereof.

7. Thus, in view of the aforesaid order, no error has been committed by the Trial Court. The documents have been given tentative exhibit numbers and it will be considered at the time of hearing of pending suit. There is no substance, therefore, in the petition and hence the same is dismissed.

8. Rule is discharged. Interim relief granted earlier stands vacated.

9. Records and Proceedings sent to this Court be sent to the Trial Court. I hereby direct the Trial Court to expedite the hearing of the Civil Suit No.512 of 2002. The Trial Court is also directed to finally decide the suit as expeditiously as possible and practicable on or before 30th June, 2008.

(***D.N.PATEL, J.***)

Amit/-